

§ 25.111b

tax rate is zero during the suspension period described in § 25.111(c).

(26 U.S.C. 5091)

[T.D. ATF-271, 53 FR 17547, May 17, 1988, as amended by T.D. TTB-36, 70 FR 62245, Oct. 31, 2005]

§ 25.111b Reduced rate of tax for small brewers.

(a) *General.* Effective January 1, 1988, 26 U.S.C. 5091(b) provides for a reduced rate of tax with respect to any brewer whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the tax imposed by § 25.111 relates) are less than \$500,000. The rate of tax for such a brewer is \$500 a year, except that the tax rate is zero during the suspension period described in § 25.111(c). The “taxable year” to be used for determining gross receipts is the taxpayer’s income tax year. All gross receipts of the taxpayer shall be included, not just the gross receipts of the business subject to special tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special tax, qualify for the reduced special (occupational) tax rate, unless the business is a member of a “controlled group”; in that case, the rules of paragraph (b) of this section shall apply.

(b) *Controlled group.* In determining gross receipts, all persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for purposes of paragraph (a) of this section. “Controlled group” means a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563-1 through 1.1563-4, except that the words “at least 80 percent” shall be replaced by the words “more than 50 percent” in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a “controlled group of corporations” apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or

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sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of this section.

(c) *Short taxable year.* Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period as required by 26 U.S.C. 448(c)(3).

(d) *Returns and allowances.* Gross receipts for any taxable year shall be reduced by returns and allowances made during that year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5091)

[T.D. ATF-271, 53 FR 17547, May 17, 1988, as amended by T.D. TTB-36, 70 FR 62245, Oct. 31, 2005]

§ 25.112 Wholesaler’s special tax.

A brewer shall be subject to or exempt from a wholesaler’s special (occupational) tax as provided in part 31 of this chapter.

(26 U.S.C. 5111, 5142)

[T.D. ATF-271, 53 FR 17548, May 17, 1988, as amended by T.D. TTB-25, 70 FR 19883, Apr. 15, 2005]

§ 25.113 Each place of business taxable.

(a) *General.* A brewer incurs special tax liability, or must register by filing the special tax return during the suspension period described in § 25.111(c), for each place of business in which an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(b) *Exception for contiguous areas.* A brewer will not incur additional special tax liability (or will not have to register during the suspension period described in § 25.111(c)) for sales of beer made at a location other than on brewery premises described on the brewer’s notice, Form 5130.10, if the location

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where such sales are made is contiguous to the brewery premises in the manner described in paragraph (a) of this section.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1347, as amended (26 U.S.C. 5143))

[T.D. ATF-271, 53 FR 17547, May 17, 1988, as amended by T.D. TTB-36, 70 FR 62245, Oct. 31, 2005]

§ 25.114 Exemptions from dealer's special taxes.

(a) *Brewer.* A brewer is not required to pay special tax or to register during the suspension period described in § 25.111(c), as a wholesale or retail dealer in beer because of sales, at the principal place of business or at the brewery, of beer which at the time of sale is stored at the brewery or which had been removed and stored in a taxpaid storeroom operated in connection with the brewery. Each brewer shall have only one exemption from dealer's special tax or registration for each brewery. The brewer may designate, in writing to the appropriate TTB officer, that the principal place of business will be exempt from dealer's special tax or registration; otherwise, the exemption will apply to the brewery.

(b) *Wholesale dealer.* A wholesale dealer in beer who has paid the appropriate special tax, or who has registered during the suspension period described in § 25.111(c), will not again be required to pay special tax or register as a wholesale dealer in beer because of sales of beer to wholesale or retail dealers in liquors or beer or to limited retail dealers, at the purchaser's place of business.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1340, as amended (26 U.S.C. 5113))

[T.D. ATF-271, 53 FR 17547, May 17, 1988, as amended by T.D. TTB-36, 70 FR 62245, Oct. 31, 2005]

EXECUTION OF SPECIAL TAX RETURNS

§ 25.117 Special tax returns.

Special tax shall be paid by return, and a return is required during the suspension period described in § 25.111(c) even though no tax is due. The prescribed return is TTB Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of appli-

cable tax, shall be filed with TTB in accordance with instructions on the form.

[T.D. ATF-271, 53 FR 17548, May 17, 1988, as amended by T.D. TTB-36, 70 FR 62245, Oct. 31, 2005]

§ 25.118 Preparation of TTB Form 5630.5.

All of the information called for on Form 5630.5 shall be provided, including:

- (a) The true name of the taxpayer.
- (b) The trade name(s) (if any) of the business(es) subject to special tax.
- (c) The employer identification number (see § 25.121).
- (d) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).
- (e) The class(es) of special tax to which the taxpayer is subject or to which the return relates during the suspension period described in § 25.111(c).
- (f) Ownership and control information: that is, the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner, if the taxpayer is a partnership, and every person owning 10% or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to TTB in connection with the Brewer's Notice, and if the information previously provided is still current.

[T.D. ATF-271, 53 FR 17548, May 17, 1988, as amended by T.D. TTB-36, 70 FR 62245, Oct. 31, 2005]

§ 25.119 Multiple locations and/or classes of tax.

A taxpayer subject to special tax (or required to register during the suspension period described in § 25.111(c)) for